

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 427 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No
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BHIKHUBHAI KALIDAS SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioner

MR DP JOSHI, AGP for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 27/07/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged, inter alia, the order dated 19.7.1996 passed by the State Government and the order dated 10.5.1994 passed by the Collector in RTS Revision Application No. 11 of 1994 confirming the orders dated 13.12.1991 and 23.12.1991 of the Deputy Collector, Godhra in suo motu revision application Nos. 28 and 29 of 1990 whereby the Deputy Collector set aside mutation entry No. 640 made on 10.7.1996 in favour of the petitioner recording purchase of agricultural land by the petitioner on the ground that the transaction was

violative of Section 63 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") and also entry No. 710 mutated in the revenue records on 2.1.1985 recording purchase of another agricultural land by the petitioner on the ground that the first transaction was itself illegal and, therefore, the second transaction was also in violation of Section 63 of the Act.

2. The petitioner was working as a safai kamdar in Godhra Municipality and retired from service in the year 1965. The petitioner had undergone study at Agricultural School after S.S.C. The petitioner purchased lands bearing Survey Nos. 142 and 144 in village Dayal of Godhra Taluka. According to the petitioner, the lands were purchased in the year 1965 but the registered sale deeds were executed by the previous owners in favour of the petitioner only on 1.9.1975. Entry No. 604 was mutated in the revenue records with respect of survey Nos. 142 and 144 on 10.7.1976. Consequently, on the strength of the aforesaid transaction, the petitioner purchased by registered sale deed dated 9.5.1984 land bearing survey No. 143 and entry No. 710 came to be mutated in the revenue records on 2.8.1985 with respect to the said land. Thereafter, the Deputy Collector, Godhra took the aforesaid entries in suo motu revision application in 1990 and by order dated 13.12.1991 and 23.12.1991 in RTS Revision Application Nos. 28 and 29 of 1990 respectively set aside both the aforesaid entries Nos. 604 and 710 mutated in the revenue records on 10.7.1976 and 2.8.1985 respectively.

3. The petitioner challenged the aforesaid orders before the Collector, Panch Mahals who rejected the appeal on 10.5.1994. The petitioner, therefore, approached the State Government. While dismissing the petitioner's revision application on 19.7.1996, the Secretary (Appeals) in the Revenue Department of the State Government observed that it appeared to be a fit case where the petitioner should make an application for regularization and the same should be considered sympathetically. The petitioner made representation and the Collector, Godhra forwarded the proposal to the State Government for regularization. However, the petitioner's request has been rejected on the ground that the petitioner was not an agriculturist on the date of first purchase of the agricultural lands in the year 1975.

4. In view of the decisions of this Court reported in the case of Ranchhodbhai Lallubhai Patel vs. State of Gujarat and Ors., 1984 (2) GLR 1225 and the decisions of

the Apex Court in Ramchand & Ors. vs. Union of India & ors., (1994) 1 SCC 44 and Mahemad Kavi Mohamad Amin vs. Fatimabai Ibrahim (Civil Appeal No. 5023 of 1985 decided on 22.8.1996) now it is well settled that even where the statute does not prescribe any period of limitation for initiating such proceedings, such power has to be exercised within a reasonable time. In the instant case, the entry made on 10.7.1976 in respect of the transaction which took place on 1.7.1975 was sought to be taken in suo motu review in 1990, that is, after a period of 14 years. The other notice issued in 1990 for cancelling the second entry also in 1985 was merely a sequel to the proposal for cancellation of the first entry. Hence, both the orders passed by the Deputy Collector on 13.12.1991 and 23.12.1991 in revision case Nos. 28 and 29 of 1990 were initiated beyond reasonable time. At this stage, it is also required to be noticed that no allegation is made in respect of any fraud or suppression of material facts before the authority. Moreover, after purchasing the lands in question, the petitioner has invested substantial amount to the tune of Rs. 60,000/to 70,000/- for which the petitioner had already taken a loan as is found in the orders under challenge.

5. In the facts and circumstances of the case, therefore, it must be held that the Deputy Collector had initiated the proceedings beyond reasonable time and, therefore, the orders passed by the Deputy Collector and confirmed by the Collector and the State Government are required to be quashed and set aside.

6. In view of the above, there is no need to examine the legality or otherwise of the communication dated 27.11.1997 (Annexure "G").

7. The petition is accordingly allowed and the orders dated 13.12.1991 (Annexure "B") and 23.12.1991 (Annexure "C") passed by the Deputy Collector in RTS Case Nos. 28 and 29 of 1990 respectively as confirmed by the Collector by his order dated 20.5.1998 (Annexure "D") and the order dated 19.7.1996 (Annexure "E") of the State Government are hereby quashed and set aside. The respondents are hereby directed not to interfere with entries No. 640 and 710 regarding Survey Nos. 142 & 144 and 143 respectively.

8. Rule is accordingly made absolute with no order as to costs.

July 27, 1998 (M.S. Shah, J.)

